

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 464

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

Read 1st time February 24, 2009, and ordered printed.

Read 2nd time February 26, 2009, and referred to the Committee on Small Business, Insurance and Industry.

Reported from the Committee March 11, 2009, with recommendation that the bill do pass and be placed on the Consent Calendar.

Taken up March 30, 2009. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

2158S.01P

AN ACT

To repeal sections 374.456, 375.020, 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 384.031, 384.043, 384.051, 384.057, and 384.062, RSMo, and to enact in lieu thereof eleven new sections relating to insurance producers.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 374.456, 375.020, 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 384.031, 384.043, 384.051, 384.057, and 384.062, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 375.020, 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 384.043, 384.051, 384.057, and 384.062, to read as follows:

375.020. 1. Beginning January 1, 2008, each insurance producer, unless exempt pursuant to section 375.016, licensed to sell insurance in this state shall successfully complete courses of study as required by this section. Any person licensed to act as an insurance producer shall, during each two years, attend courses or programs of instruction or attend seminars equivalent to a minimum of sixteen hours of instruction. Of the sixteen hours' training required in this subsection, the hours need not be divided equally among the lines of authority in which the producer has qualified. The courses or programs attended by the producer during each two-year period shall include instruction on Missouri law, products offered in any line of authority in which the producer is qualified, producers' duties and obligations to the department, and business ethics, including sales suitability. Course credit shall be given to members of the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

13 general assembly as determined by the department.

14 2. Subject to approval by the director, the courses or programs of
15 instruction which shall be deemed to meet the director's standards for continuing
16 educational requirements shall include, but not be limited to, the following:

17 (1) American College Courses (CLU, ChFC);

18 (2) Life Underwriters Training Council (LUTC);

19 (3) Certified Insurance Counselor (CIC);

20 (4) Chartered Property and Casualty Underwriter (CPCU);

21 (5) Insurance Institute of America (IIA);

22 (6) Any other professional financial designation approved by the director
23 by rule;

24 (7) An insurance-related course taught by an accredited college or
25 university or qualified instructor who has taught a course of insurance law at
26 such institution;

27 (8) A course or program of instruction or seminar developed or sponsored
28 by any authorized insurer, recognized producer association or insurance trade
29 association, **or any other entity engaged in the business of providing**
30 **education courses to producers.** A local producer group may also be
31 approved if the instructor receives no compensation for services.

32 3. A person teaching any approved course of instruction or lecturing at
33 any approved seminar shall qualify for the same number of classroom hours as
34 would be granted to a person taking and successfully completing such course,
35 seminar or program.

36 4. Excess hours accumulated during any two-year period may be carried
37 forward to the two-year period immediately following the two-year period in
38 which the course, program or seminar was held.

39 5. For good cause shown, the director may grant an extension of time
40 during which the educational requirements imposed by this section may be
41 completed, but such extension of time shall not exceed the period of one calendar
42 year. The director may grant an individual waiver of the mandatory continuing
43 education requirement upon a showing by the licensee that it is not feasible for
44 the licensee to satisfy the requirements prior to the renewal date. Waivers may
45 be granted for reasons including, but not limited to:

46 (1) Serious physical injury or illness;

47 (2) Active duty in the armed services for an extended period of time;

48 (3) Residence outside the United States; or

49 (4) The licensee is at least seventy years of age.

50 6. Every person subject to the provisions of this section shall furnish in
51 a form satisfactory to the director, written certification as to the courses,
52 programs or seminars of instruction taken and successfully completed by such
53 person. Every provider of continuing education courses authorized in this state
54 shall, within thirty working days of a licensed producer completing its approved
55 course, provide certification to the director of the completion in a format
56 prescribed by the director.

57 7. The provisions of this section shall not apply to those natural persons
58 holding licenses for any kind or kinds of insurance for which an examination is
59 not required by the law of this state, nor shall they apply to any limited lines
60 insurance producer license or restricted license as the director may exempt.

61 8. The provisions of this section shall not apply to a life insurance
62 producer who is limited by the terms of a written agreement with the insurer to
63 transact only specific life insurance policies having an initial face amount of five
64 thousand dollars or less, or annuities having an initial face amount of ten
65 thousand dollars or less, that are designated by the purchaser for the payment
66 of funeral or burial expenses. The director may require the insurer entering into
67 the written agreements with the insurance producers pursuant to this subsection
68 to certify as to the representations of the insurance producers.

69 9. Rules and regulations necessary to implement and administer this
70 section shall be promulgated by the director, including, but not limited to, rules
71 and regulations regarding the following:

72 (1) Course content and hour credits: the insurance advisory board
73 established by section 375.019 shall be utilized by the director to assist him in
74 determining acceptable content of courses, programs and seminars to include
75 classroom equivalency;

76 (2) Filing fees for course approval: every applicant seeking approval by
77 the director of a continuing education course under this section shall pay to the
78 director a filing fee of fifty dollars per course. Fees shall be waived for state and
79 local insurance producer groups. Such fee shall accompany any application form
80 required by the director. Courses shall be approved for a period of no more than
81 one year. Applicants holding courses intended to be offered for a longer period
82 must reapply for approval. Courses approved by the director prior to August 28,
83 1993, for which continuous certification is sought should be resubmitted for
84 approval sixty days before the anniversary date of the previous approval.

85 10. All funds received pursuant to the provisions of this section shall be
86 transmitted by the director to the department of revenue for deposit in the state
87 treasury to the credit of the insurance dedicated fund. All expenditures
88 necessitated by this section shall be paid from funds appropriated from the
89 insurance dedicated fund by the legislature.

 382.400. As used in sections 382.400 to [382.410] **382.409**, the following
2 terms mean:

3 (1) "Accredited state", a state in which the insurance department or
4 regulatory agency has qualified as meeting the minimum financial regulatory
5 standards promulgated and established from time to time by the National
6 Association of Insurance Commissioners;

7 (2) ["Broker", an insurance broker or brokers as defined in section
8 375.012, RSMo;

9 (3) "Control" or "controlled" has the meaning prescribed by section
10 382.010;

11 [(4)] **(3)** "Controlled insurer", a licensed insurer which is controlled,
12 directly or indirectly, by a [broker] **producer**;

13 [(5)] **(4)** "Controlling [broker] **producer**", a [broker] **producer** who,
14 directly or indirectly, controls an insurer;

15 [(6)] **(5)** "Licensed insurer" or "insurer", any person, firm, association or
16 corporation duly licensed to transact a property or casualty insurance business
17 in this state. The following are not licensed insurers for the purposes of sections
18 382.400 to 382.410:

19 (a) All risk retention groups as defined in the federal Superfund
20 Amendments Reauthorization Act of 1986, as amended, and the federal Risk
21 Retention Act, 15 U.S.C. section 3901, et seq., as amended, and sections 375.1080
22 to 375.1105, RSMo;

23 (b) All residual market pools and joint underwriting authorities or
24 associations; and

25 (c) All captive insurers. For the purposes of sections 382.400 to 382.410,
26 "captive insurers" are insurance companies owned by another organization whose
27 exclusive purpose is to insure risks of the parent organization and affiliated
28 companies or, in the case of groups and associations, insurance organizations
29 owned by the insureds whose exclusive purpose is to insure risks to member
30 organizations and group members and their affiliates;

31 **(6) "Producer", an insurance broker or brokers or any other**

32 **person, firm, association, or corporation, when, for any compensation,**
33 **commission, or other thing of value, the person, firm, association, or**
34 **corporation acts or aids in any manner in soliciting, negotiating, or**
35 **procuring the making of an insurance contract on behalf of an insured**
36 **other than the person, firm, association, or corporation.**

382.402. Sections 382.400 to [382.410] **382.409** shall apply to licensed
2 insurers either domiciled in this state or domiciled in a state that is not an
3 accredited state having in effect laws substantially similar to the provisions of
4 sections 382.400 to [382.410] **382.409**. All provisions of this chapter, to the
5 extent they are not superseded by sections 382.400 to [382.410] **382.409**, shall
6 continue to apply to all parties within holding company systems subject to
7 sections 382.400 to [382.410] **382.409**.

382.405. 1. (1) The provisions of this section shall apply if in any
2 calendar year the aggregate amount of gross written premium on business placed
3 with a controlled insurer by controlling [broker] **producer** is equal to or greater
4 than five percent of the admitted assets of the controlled insurer, as reported in
5 the controlled insurer's quarterly statement filed as of September thirtieth of the
6 prior year.

7 (2) Notwithstanding the provisions of subdivision (1) of this subsection,
8 the provisions of this section shall not apply if:

9 (a) The controlling [broker] **producer**:

10 a. Places insurance only with the controlled insurer, or only with the
11 controlled insurer and a number of members of the controlled insurer's holding
12 company system, or the controlled insurer's parent, affiliate or subsidiary and
13 receives no compensation based upon the amount of premiums written in
14 connection with such insurance; and

15 b. Accepts insurance placements only from nonaffiliated subproducers,
16 and not directly from insureds; and

17 (b) The controlled insurer, except for insurance business written through
18 a residual market facility such as the joint underwriting association prescribed
19 by section 303.200, RSMo, accepts insurance business only from a controlling
20 [broker] **producer**, a [broker] **producer** controlled by the controlled insurer, or
21 a [broker] **producer** that is a subsidiary of the controlled insurer.

22 2. A controlled insurer shall not accept business from a controlling
23 [broker] **producer** and a controlling [broker] **producer** shall not place business
24 with a controlled insurer unless there is a written contract between the

25 controlling [broker] **producer** and the insurer specifying the responsibilities of
26 each party, which contract has been approved by the board of directors of the
27 insurer and contains the following minimum provisions:

28 (1) The controlled insurer may terminate the contract for cause, upon
29 written notice to the controlling [broker] **producer**. The controlled insurer shall
30 suspend the authority of the controlling [broker] **producer** to write business
31 during the pendency of any dispute regarding the cause for the termination;

32 (2) The controlling [broker] **producer** shall render accounts to the
33 controlled insurer detailing all material transactions, including information
34 necessary to support all commissions, charges and other fees received by, or
35 owing to, the controlling [broker] **producer**;

36 (3) The controlling [broker] **producer** shall remit all funds due under the
37 terms of the contract to the controlled insurer on at least a monthly basis. The
38 due date shall be fixed so that premiums or installments thereof collected shall
39 be remitted no later than ninety days after the effective date of any policy placed
40 with the controlled insurer under the contract;

41 (4) All funds collected for the controlled insurer's account shall be held by
42 the controlling [broker] **producer** in a fiduciary capacity, in one or more
43 appropriately identified bank accounts in banks that are members of the Federal
44 Reserve System, in accordance with the provisions of applicable insurance law;
45 however, funds of a controlling [broker] **producer** not required to be licensed in
46 this state shall be maintained in compliance with the requirements of the
47 controlling [broker's] **producer's** domiciliary jurisdiction;

48 (5) The controlling [broker] **producer** shall maintain separately
49 identifiable records of business written for the controlled insurer;

50 (6) The contract shall not be assigned in whole or in part by the
51 controlling [broker] **producer**;

52 (7) The controlled insurer shall provide the controlling [broker] **producer**
53 with its underwriting standards, rules and procedures, manuals setting forth the
54 rates to be charged, and the conditions for the acceptance or rejection of
55 risks. The controlling [broker] **producer** shall adhere to the standards, rules,
56 procedures, rates and conditions. The standards, rules, procedures, rates and
57 conditions shall be the same as those applicable to comparable business placed
58 with the controlled insurer by a [broker] **producer** other than the controlling
59 [broker] **producer**;

60 (8) The rates and terms of the controlling [broker's] **producer's**

61 commissions, charges or other fees and the purposes for those charges or
62 fees. The rates of the commissions, charges and other fees shall be no greater
63 than those applicable to comparable business placed with the controlled insurer
64 by **[brokers] producers** other than controlling **[brokers] producers**. For
65 purposes of this subdivision and subdivision (7) of this subsection, examples of
66 comparable business includes the same lines of insurance, same kinds of
67 insurance, same kinds of risks, similar policy limits, and similar quality of
68 business;

69 (9) If the contract provides that the controlling **[broker] producer**, on
70 insurance business placed with the insurer, is to be compensated contingent upon
71 the insurer's profits on that business, then such compensation shall not be
72 determined and paid until at least five years after the premiums on liability
73 insurance are earned and at least one year after the premiums are earned on any
74 other insurance. In no event shall the commissions be paid until the adequacy
75 of the controlled insurer's reserves on remaining claims has been independently
76 verified pursuant to subsection 1 of this section;

77 (10) A limit on the controlling **[broker's] producer's** writings in relation
78 to the controlled insurer's surplus and total writings. The insurer may establish
79 a different limit for each line or subline of business. The controlled insurer shall
80 notify the controlling **[broker] producer** when the applicable limit is approached
81 and shall not accept business from the controlling **[broker] producer** if the limit
82 is reached. The controlling **[broker] producer** shall not place business with the
83 controlled insurer if it has been notified by the controlled insurer that the limit
84 has been reached; and

85 (11) The controlling **[broker] producer** may negotiate but shall not bind
86 reinsurance on behalf of the controlled insurer, except that the controlling
87 **[broker] producer** may bind facultative reinsurance contracts pursuant to
88 obligatory facultative agreements if the contract with the controlled insurer
89 contains underwriting guidelines including, but both reinsurance assumed and
90 ceded, a list of reinsurers with which such automatic agreements are in effect, the
91 coverages and amounts or percentages that may be reinsured and commission
92 schedules.

93 3. Every controlled insurer shall have an audit committee of the board of
94 directors composed of independent directors. The audit committee shall annually
95 meet with management, the insurer's independent certified public accountants,
96 and an independent casualty actuary or other independent loss reserve specialist

97 acceptable to the director to review the adequacy of the insurer's loss reserves.

98 4. (1) In addition to any other required loss reserve certification, the
99 controlled insurer shall annually, on April first of each year, file with the director
100 an opinion of an independent casualty actuary, or such other independent loss
101 reserve specialist acceptable to the director, reporting loss ratios for each line of
102 business written and attesting to the adequacy of loss reserves established for
103 losses incurred and outstanding as of year-end, including incurred but not
104 reported, on business placed by the **[broker] producer**; and

105 (2) The controlled insurer shall annually report to the director the amount
106 of commissions paid to the **[broker] producer**, the percentage such amount
107 represents of the net premiums written and comparable amounts and percentage
108 paid to noncontrolling **[brokers] producers** for placements of the same kinds of
109 insurance.

382.407. The **[broker] producer**, prior to the effective date of the policy,
2 shall deliver written notice to the prospective insured disclosing the relationship
3 between the **[broker] producer** and the controlled insurer, except that if the
4 business is placed through a subproducer who is not a controlling **[broker]**
5 **producer**, the controlling **[broker] producer** shall retain in his records a signed
6 commitment from the subproducer that the subproducer is aware of the
7 relationship between the insurer and the **[broker] producer** and that the
8 subproducer has or will notify the insured.

382.409. 1. (1) If the director believes that the controlling **[broker]**
2 **producer** or any other person has not materially complied with sections 382.400
3 to 382.410, or any regulation or order promulgated hereunder, after notice and
4 opportunity to be heard, the director may order the controlling **[broker]**
5 **producer** to cease placing business with the controlled insurer; and

6 (2) If it was found that because of such material noncompliance that the
7 controlled insurer or any policyholder thereof has suffered any loss or damage,
8 the director may maintain a civil action or intervene in an action brought by or
9 on behalf of the insurer or policyholder for recovery of compensatory damages for
10 the benefit of the insurer or policyholder or other appropriate relief.

11 2. If an order of liquidation or rehabilitation of the controlled insurer has
12 been entered pursuant to sections 375.1150 to 375.1246, RSMo, and the receiver
13 appointed under that order believes that the controlling **[broker] producer** or
14 any other person has not materially complied with sections 382.400 to 382.410,
15 or any regulation or order promulgated hereunder, and the insurer suffered any

16 loss or damage therefrom, the receiver may maintain a civil action for recovery
17 of damages or other appropriate sanctions for the benefit of the insurer.

18 3. Nothing contained in this section shall affect the right of the director
19 to impose any other penalties provided for by law.

20 4. Nothing contained in this section is intended to or shall in any manner
21 alter or affect the rights of policyholders, claimants, creditors or other third
22 parties.

384.025. 1. If at any time the director has reason to believe that an
2 eligible surplus lines insurer:

- 3 (1) Is in unsound financial condition;
- 4 (2) Is no longer eligible under section 384.021;
- 5 (3) Has willfully violated the laws of this state; or
- 6 (4) Does not make reasonably prompt payment of just losses and claims
7 in this state or elsewhere;

8 the director may declare it ineligible.

9 2. The director shall promptly [mail] **publish** notice of all such
10 declarations [to each surplus lines licensee] **in any public electronic format.**

384.043. 1. No insurance producer shall procure any contract of surplus
2 lines insurance with any nonadmitted insurer, unless he possesses a current
3 surplus lines insurance license issued by the director.

4 2. The director shall issue a surplus lines license to any qualified holder
5 of a current resident or nonresident property and casualty insurance producer
6 license but only when the licensee has:

- 7 (1) Remitted the one hundred dollar initial fee to the director;
- 8 (2) Submitted a completed license application on a form supplied by the
9 director; and
- 10 (3) Passed a qualifying examination approved by the director, except that
11 all holders of a license prior to July 1, 1987, shall be deemed to have passed such
12 an examination.

13 3. Each surplus lines license shall be renewed [annually] **for a term of**
14 **two years** on the **biennial** anniversary date of issuance and continue in effect
15 until refused, revoked or suspended by the director in accordance with section
16 384.065; except that if the [annual] **biennial** renewal fee for the license is not
17 paid on or before the anniversary date, the license terminates. The [annual]
18 **biennial** renewal fee is [fifty] **one hundred** dollars.

384.051. 1. Every insured in this state who procures or causes to be

2 procured or continues or renews insurance in any surplus lines insurer, or any
3 self-insurer in this state who so procures or continues with, any surplus lines
4 insurer, excess of loss, catastrophe or other insurance, upon a subject of insurance
5 resident, located or to be performed within this state, other than insurance
6 procured through a surplus lines broker pursuant to sections 384.011 to 384.071,
7 shall before March second of the year next succeeding the year in which the
8 insurance was so procured, continued or renewed, file a written report of the
9 same with the director on forms prescribed by the director and furnished to such
10 an insured upon request. The report shall show:

- 11 (1) The name and address of the insured or insureds;
- 12 (2) The name and address of the insurer or insurers;
- 13 (3) The subject of the insurance;
- 14 (4) A general description of the coverage;
- 15 (5) The amount of premium currently charged therefor;
- 16 (6) Such additional pertinent information as may be reasonably requested
17 by the director.

18 2. If any such insurance covers also a subject of insurance resident,
19 located or to be performed outside this state, for the purposes of this section, a
20 proper pro rata portion of the entire premium payable for all such insurance shall
21 be allocated as to the subjects of insurance resident, located or to be performed
22 in this state.

23 3. Any insurance in a surplus lines insurer procured through negotiations
24 or an application in whole or in part occurring or made within or from within this
25 state, or for which premiums in whole or in part are remitted directly or
26 indirectly from within this state, shall be deemed to be insurance procured or
27 continued or renewed in this state within the intent of subsection 1 of this
28 section.

29 4. For the general support of the government of this state there is levied
30 upon the insured **or self-insurer** who procures insurance pursuant to
31 subsections 1 and 3 of this section a tax at the rate of five percent of the net
32 amount of the premium in respect of risks located in this state. Before April
33 sixteenth of the year next succeeding the year in which the insurance was so
34 procured, continued or renewed, the insured shall remit to the [director]
35 **department of revenue** the amount of the tax. The [director before June first
36 of each year shall certify and transmit to the director of revenue the sums so
37 collected] **department of revenue shall notify the director of the sums**

38 **collected from each insured or self-insurer.**

384.057. 1. Before March second of each year, each surplus lines broker
2 shall report under oath to the director on forms prescribed by him **or her** a
3 statement showing, **with respect to the year ending the immediately**
4 **preceding December thirty-first:**

5 (1) The gross amounts charged for surplus lines insurance with respect
6 to risks located within this state, exclusive of sums collected for the payment of
7 federal, state or local taxes;

8 (2) The amount of net premiums with respect to the insurance. For the
9 purpose of this section, "net premiums" means the gross amount of charges for
10 surplus lines insurance with respect to risks located within this state, exclusive
11 of sums collected for the payment of federal, state and local taxes, less returned
12 premiums.

13 **2. No later than within forty-five days after the end of each**
14 **calendar quarter ending March thirty-first, June thirtieth, and**
15 **December thirty-first each surplus lines broker shall report under oath**
16 **to the director on forms prescribed by him or her a statement showing,**
17 **with respect to each respective calendar quarter:**

18 (1) The gross amounts charged for surplus lines insurance with
19 respect to risks located within this state, exclusive of sums collected for
20 the payment of federal, state, or local taxes;

21 (2) The amount of net premiums with respect to the
22 insurance. For the purpose of this section, "net premiums" means the
23 gross amount of charges for surplus lines insurance with respect to
24 risks located within this state, exclusive of sums collected for the
25 payment of federal, state, and local taxes, less returned premiums.

384.062. 1. If [the tax collectible] any tax, penalty, or interest
2 payable by a surplus lines licensee under the provisions of sections 384.011 to
3 384.071 [has been collected and] is not paid within the time prescribed, the same
4 shall be recoverable in a suit brought by the director against the surplus lines
5 licensee.

6 2. All taxes, penalties, and interest or delinquent taxes levied pursuant
7 to this chapter shall be paid to the [director] **department of revenue**, who shall
8 [obtain such taxes, penalties and interest by civil action against the insured or
9 the surplus lines licensee, and the director shall remit such taxes when collected
10 to the director of revenue] **notify the director of the sums collected from**

11 **each surplus lines licensee.** All checks and drafts remitted for the payment
12 of such taxes, penalties and interest shall be made payable to the director of
13 revenue.

14 3. Taxes collected pursuant to this chapter are taxes collected by the
15 director of revenue within the meaning of section 139.031, RSMo.

[374.456. 1. The director of the department of insurance,
2 financial institutions and professional registration shall personally
3 report to the appropriate committees of the general assembly by
4 March first of each year on the status of all actions initiated,
5 maintained by the director, or which have been concluded, during
6 the preceding year to enforce the provisions of this act. The
7 director shall answer all questions regarding such actions, or
8 regarding other matters that are related to the provisions of this
9 act.

10 2. The report to the appropriate committees of the general
11 assembly shall cover enforcement actions related to sections
12 354.500 to 354.636, RSMo, relating to health maintenance
13 organizations, sections 374.500 to 374.515 relating to utilization
14 review agents, and sections 376.1350 to 376.1399, RSMo, relating
15 to all managed care health benefit plans.]

[384.031. Within thirty days after the placing of any
2 surplus lines insurance, each surplus lines licensee shall file with
3 the director a written report, on a form prescribed by the director,
4 which shall be kept confidential, regarding the insurance with the
5 director, including the following:

- 6 (1) The name and address of the insured;
- 7 (2) The identity of the insurer or insurers;
- 8 (3) A description of the subject and location of the risk;
- 9 (4) The amount of premium charged for the insurance; and
- 10 (5) Such other pertinent information as the director may
11 reasonably require.]

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